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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/020,032	12/14/2001	Jose H. Sabat	7063-1	9000	
7590	03/09/2005	EXAMINER			
Akerman, Senterfitt & Eidson, P.A. Post Office Box 3188 West Palm Beach, FL 33402-3188				PAYNE, DAVID C	
ART UNIT		PAPER NUMBER			
		2633			

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/020,032	SABAT ET AL. <i>JK</i>
Examiner	Art Unit	
David C. Payne	2633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 14 December 2001.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-4, 6, 8-17, 19, 21-26 is/are rejected.

7)  Claim(s) 5, 7, 18 and 20 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 14 December 2001 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/25/2002.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim(s) is/are rejected under 35 U.S.C. 102(e) as being anticipated by Saleh et al. US 20050036442 A1 (Saleh).

Re claims 1, 9, 10, 14, 22 and 23, Saleh disclosed a method/system

In a mesh type communications network, a method for providing a QoS based protection of network failure scenarios comprising of: a) allocating network resources for protection of a network communication service, said allocating of said network resources selectively determined based on a QoS parameter requirement for said network communication service; b) receiving an alarm notification of a failure scenario disrupting network resources of said communications network interrupting said network communication service; c) responsive to said alarm notification, automatically switching a communication path of said network communication service to make use of said network resources which have been pre-allocated for protection of said network communication service, see Saleh paragraphs: 0006, 0007, 0033, 0044, and 0060.

Re claims 2, 11, 15 and 24, Saleh disclosed a method/system wherein said communications network is a mesh-based ION and said network communication service

is an optical path, see Saleh paragraphs: 0040, 0047.

Re claims 3 and 16, Saleh disclosed wherein said network has at least one optical node comprised of an optical cross connect (OXC), see Saleh paragraphs: 0073.

Re claims 4 and 17, Saleh disclosed wherein said allocating of said network resources is performed in response to a demand for network communication services, said demand for network communication service containing at least one QoS parameter for specifying said QoS parameter requirement for said network communication service, see Saleh paragraphs: 0033.

Re claims 6 and 19, Saleh disclosed wherein said QoS parameter comprises a network resources parameter identifying the relative cost of service in terms of said network resources, see Saleh paragraphs: 0033.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim(s) 8 and 21 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleh et al. US 20050036442 A1 (Saleh) in view of Walters et al. US 20020176131 A1 (Walters).

Re claims 8 and 21, Saleh does not disclose a method/system wherein pre-configured OXCs on a protection optical path are a shared resource to be allocated in a routing and wavelength assignment (RWA) process. Walters disclosed using wavelength assignments in a optical failure recovery network, see e.g., Figure 27. It would have been obvious to one of ordinary skill in the art at the time of invention to use wavelength assignment in the Saleh system so that increase bandwidth could accommodate more traffic thru multiple color spectrum.

5. Claim(s) 12, 13, 25 and 26 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Saleh et al. US 20050036442 A1 (Saleh).

Re claims 12, 13, 25 and 26, Saleh does not disclose that the design method is applied at an initial phase of said network design. It would have been obvious to one of ordinary skill in the art at the time of invention to plan for optimum design before operating a network as this is common practice in the industry to try and maximize bandwidth/dollar and minimize cost of a network. Furthermore, applying the design on a continuous basis is likewise as obvious as parameters and operating conditions change is the network given that traffic is dynamic.

#### ***Allowable Subject Matter***

6. Claims 5, 7, 18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp

  
David C. Payne  
Patent Examiner  
AU 2633